

Rabbinic Literature

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A Comparison of *Mishnah* and *Tosefta Avodah Zarah* and their Attitude toward the Non-Jew¹

The Tosefta is something of a mystery. Strack and Stemberger describe it as a book of “additional halakhic teaching[s] which supplement M[ishnah] (in the wider sense as the officially taught *halakhah*).”² Neusner calls the Tosefta “the Mishnah’s first commentary, first amplification, and first extension....the first talmud.”³ However, the relationship of the Mishnah and the Tosefta is more complex than these definitions suggest. And though both Talmuds appear to “read Mishnah passages through Tosefta complements to the Mishnah,” according to Neusner,⁴ making Tosefta a bridge between a great deal of the Mishnah and the later texts, there is also much uncertainty about their relationship. These many questions contribute to an inability to date the editing of the Tosefta with much precision, to identify its editor/author, or to determine its purpose.

Tradition has it that the Tosefta was authored by R. Hiyya bar Abba, a fifth generation *Tanna* and friend and student of R. Judah Ha-Nasi, and, perhaps, also R. Hoshayah, a first generation *Amora* and student of R. Hiyya. Though *Sanhedrin* 86a suggests that R. Nehemyah, a third generation *Tanna*, is the source of the anonymous sections of the Tosefta, Strack and Stemberger conclude, along with many medieval and modern scholars, that this citation does not refer to “our Tosefta” but to some explanatory addition to the Mishnah.⁵ However, they note that the two views can be reconciled by assuming “a T[osefta] of Nehemya supplementing the M[ishnah] of Aqiba or Meir, which R. Hiyya then revised and completed in dependence on Rabbi’s M[ishnah].”⁶ In this traditional view, the Tosefta follows the Mishnah by one or two generations and serves to preserve *baraitot*, traditions of the *Tannaim* that were not included in the Mishnah, or it serves as a commentary on the Mishnah.⁷

In a number of respects, the Tosefta is very like the Mishnah.⁸ It is written in Mishnaic Hebrew, with some sentences in Aramaic and a number of loan words, for the most part Greek and Latin. The Tosefta cites the same Sages—the *tannaim*—that the Mishnah cites, although their distribution is somewhat different. The Tosefta also shares the Mishnah’s structure, consisting of the same six *sedarim*, with the same *massekhtot* within each—lacking only *Avot*, *Tamid*, *Middot*, and *Kinnim*—although with occasional and small differences in name and arrangement. Neusner claims that “differentiating a passage that occurs only in the Tosefta from a corresponding one in the Mishnah is not readily accomplished.”⁹ And he goes further: the Tosefta is “wholly depend[ent] upon the Mishnah for its rhetoric, topical program, and logic of coherent discourse.”¹⁰

Strack and Stemberger review some theories of the Tosefta’s origins and connections to the Mishnah developed by modern scholars.¹¹ These range from the suggestion that the Tosefta is a post-Talmudic compilation to the idea that it is a relatively early and independent collection of Tannaitic materials not in the Mishnah. But all of these proposals have shortcomings, and the authors conclude that “global solutions” are not adequate because the relationship of the Mishnah and Tosefta varies from tractate to tractate, each of which must be evaluated individually to determine the connection. In some cases, the Tosefta appears to be almost entirely independent of the Mishnah, for example *Seder Kodashim*. In some the Tosefta appears highly dependent on the Mishnah, where the Tosefta acts as a supplement or commentary to the Mishnah, for example, *Seder Teharot*, or where perhaps both depend on an earlier, defined tradition, for example, *Massekhet Ma’aserot* and *Massekhet Ma’aser Sheni*. In some cases, the Tosefta seems to presuppose the Mishnah, for example, *Massekhet Sukkot*; and in still others, the Mishnah seems to presume the Tosefta, for example, *Massekhet Yevamot*. And there are other possibilities as well. Perhaps closer analysis will reveal that a single type of connection does not even suffice to describe the link between whole tractates.

The relationship of the Tosefta to the Talmuds is equally unclear. Strack and Stemberger identify two divergent schools of thought on the question.¹² One perspective, identified

with J.N. Epstein, holds that the *baraitot* of the *Bavli* are based on an earlier form of the Tosefta while the *baraitot* of the *Yerushalmi* are based on today's Tosefta. The other theory, identified with C. Albeck, holds that the editors of the two Talmuds were not familiar with the Tosefta; hence, their *baraitot* frequently differ in form from the Tosefta's, and they often omit *baraitot* from the Tosefta critical to the Talmudic argument. Hence, this school of thought concludes that the material in the Talmuds comes from other collections of *baraitot*, which later became sources of our Tosefta—redacted late in the Amoraic period. There are additional theories falling between the two extremes. Strack and Stemberger suggest that “we are still far removed from a generally acceptable description of the development and intent of T[osefta].”¹³

As to the time of the Tosefta's composition, Strack and Stemberger conclude:

In the absence of compelling evidence, the common ground between T[osefta] and M[ishnah] is too great to permit a significant chronological distance between their respective dates of composition....As a fully edited work, T[osefta] is certainly post-Mishnaic and therefore Amoraic, although quite probably from the beginning of the Amoraic period. It is at any rate hardly possible to sustain serious objections to the assumption of a final redaction in the late 3rd or early 4th century.”¹⁴

They further surmise that the Tosefta was redacted in Palestine. These conclusions are close to those in Neusner's more recent writing on the subject:

The Tosefta as a whole, ... was compiled sometime after the conclusion of the Mishnah in ca. 200 but before the formation of the Talmud of the Land of Israel, ca. 400, which frequently cites materials found in the Tosefta and interprets the Mishnah in light of the Tosefta's complements. The compilation therefore is a work of the third century, 200-300.¹⁵

Even after this “final redaction” Strack and Stemberger find it likely that the Tosefta grew, in particular through the addition of material from the Mishnah (the opposite movement of text is also noted). Because the “T[osefta] did not attain to the official status of M[ishnah] and was therefore less controlled in its literary shape,” it may have been

more likely to be altered. However, it was also “less prone to be deliberately adapted to later *halakhah*” and hence more likely neglected than overly manipulated.¹⁶

It is also possible that the Tosefta developed historically prior to the final redaction. From a legal collection that was initially parallel to but independent of the Mishnah, the Tosefta might have become a supplement to the Mishnah once the latter text was canonized. As supplement to the Mishnah, the Tosefta may have been added to and edited but would not have received the kind of complete redaction that gave us the Mishnah. Further, individual tractates may have developed independently and in different ways.¹⁷

Tremendous uncertainties about the Tosefta persist. The analysis that follows will attempt to add to the discussion of the relationship between the Mishnah and the Tosefta by identifying continuities and divergences in the structure and content of one book in the two texts, *Massekhet Avodah Zarah*. Then I will discuss what the two texts reveal about attitudes toward non-Israelites in these texts of early Rabbinic Judaism.

Comparison of *Mishnah* and *Tosefta Avodah Zarah*¹⁸

The formal continuities between the Mishnah and the Tosefta noted above are present in *Avodah Zarah* as well. The *massekhet* appears within *Seder Nezekin* in the same place in both texts, and the language, Mishnaic Hebrew with some Aramaic and foreign words, is the same. Both texts show variation in the language used to refer to “idol worship” and “idol worshippers.” Blackman notes that the terms *avodah zarah*, *avodah kokhavim*, *avodah gilulim*, and *avodah elilim* and their variants (*avodat*, *oved*, etc.) are used “indiscriminately” in various texts of the Mishnah.¹⁹ Where the Hebrew Tosefta text uses *avodah zarah* Neusner refers to “idolatry” (e.g., 1:13), but more commonly the text uses *goy/goyim*, *nokhri/nokhrit*/etc., which Neusner translates as “gentile/gentiles/etc.” Even statements that are otherwise identical in the two texts may differ in the vocabulary that identifies the idolater (e.g., M2:1 and T3:2). Because censorship over the centuries led to the substitution of less politically sensitive terms in all of the rabbinic texts,²⁰ inferences can’t readily be drawn from the variant uses of these terms in the Mishnah and Tosefta.

Although Neusner concludes that the Tosefta, unlike the Mishnah, was not made to be memorized, it does contain many instances of repetition, parallel structure, elision, and the like that suggest oral transmission. My lack of expertise in Mishnaic Hebrew does not allow me to address this question further.

The Mishnah and the Tosefta share several other elements as well. One of the distinctive and surprising characteristics of the Mishnah is that its rulings are stated, for the most part, on the Mishnah's own authority, independent of other texts or of any other sort of rationale. In particular, the Mishnah rarely offers biblical justification for its rulings.²¹ As Neusner explains, until the Mishnah, books that claimed to be holy were written in the names of biblical heroes, imitated biblical style, or tied themselves to the biblical text as commentary and thus directly based their own authority on the Bible's. "But the Mishnah made no such claim. It entirely ignored the style of biblical Hebrew....It is silent on its authorship....Above all, the Mishnah contains scarcely a handful of exegeses of Scripture. These, where they occur, play a trivial and tangential role."²² Strack and Stemberger state that the Mishnah gives "the impression of a deliberate effort to be independent of the Bible."²³ Kraemer refers to this characteristics of the Mishnah as "entirely innovative and without precedent."²⁴ Just six of the 50 *mishnayot* in *Avodah Zarah* contain proof texts from *Tanakh*. Eight unique biblical verses are cited; two are cited twice. In comparison, 21 of the 114 *toseftot* in *Avodah Zarah* contain proof texts from the *Tanakh*. Twenty-eight unique biblical verses are cited; five are cited twice, and one is repeated four times.

Though neither text is especially rich in biblical proof texts—12 percent of *mishnayot* and 18 percent of *toseftot* contain them, *Tosefta Avodah Zarah* does contain 3 to 3.5 times as many citations as the comparable Mishnah, a somewhat greater increase than would be expected based merely on the increased length of the text. If the Tosefta serves as a commentary on the Mishnah, we might expect to find new biblical citations providing justification for rulings made in the Mishnah. However, only eight of the citations in the Tosefta concern topics related to those in the Mishnah, often quite indirectly. For example, *tosefta* 3:4 concerns the danger posed to Israelites by idolaters,

which is the subject of *mishnayot* 2:1, 2:2, and 2:3. However, the Tosefta extends the warning about being alone with a non-Israelite to situations in which an Israelite and a non-Jew are traveling together and offers Jacob's precautions with Esau (Gen. 33:14, 17) as proof of the proper behavior. Twenty of the biblical citations in the Tosefta concern topics not included in the Mishnah at all. In just one case, *tosefta* 3:19, do the biblical citations deal directly with the subject of the Mishnah (3:3), which is, in fact, quoted with its proof text before the additional citations.²⁵

In neither text are the biblical citations dispersed uniformly throughout. In the Mishnah, the majority of biblical rationales are found in four consecutive *mishnayot* in Chapter 3. In the Tosefta, Chapters 3, 4, and 6 contain the majority of citations, and two *toseftot* (3:9 and 4:5) contain 14 citations, nearly half of the total. This distribution suggests that in the case of both texts, biblical citations are attached to particular traditions, perhaps associated with specific schools or Sages, but appeals to the authority of the Bible do not appear to be expected or common rationales for argument in either.

Rationales other than biblical ones for rulings are also rare in the Mishnah. They occur just 15 times in 10 *mishnayot* in *Avodah Zarah*, in all but one case introduced by *mipnei she-*.²⁶ According to Steinsaltz, in the Talmud this conjunction, which means "because," introduces arguments based on common sense.²⁷ Several of the cases in *Avodah Zarah* appear to involve common sense reasons. For example, all images are prohibited in 3:1, "because similar items are worshipped." And open barrels of wine are permitted in time of war in 5:6, "because there is no time for libation." However, two other types of explanation are almost equally common in the Mishnah. One type can only be considered commonsensical in a world where assumptions about non-Israelites include, for example, that they are suspected of bestiality, sexual immorality, and violence against Jews (e.g., 2:1). Perhaps these should be considered part of the following category of rationales, those that have to do with principles of rabbinic law, such as the special status of the Land of Israel (1:8, 1:9), the requirements of tithing (4:9), the methods by which ritual uncleanness is transferred (2:7, 3:6), rules concerning mixtures (5:2, 5:8, 5:9), and the like.

Tosefta Avodah Zarah includes 66 reasons for rulings other than biblical ones, more than four times the number in the Mishnah and more than would be expected on the basis of the length of the *Tosefta* alone. These can be divided into the three types found in the Mishnah. The three types of rationales identified above are almost equally represented in the *Tosefta*. Common sense rationales include the reason for not delivering utensils to an idolater before his festival in 1:3, “because this increases his rejoicing,” and the reason for rejecting a ruling allowing the sale of horses to non-Jews in 2:3, “on the count of not selling to them a large beast.” Rationales related to the character of idolaters include the rejection of a non-Israelite giving bitters to (healing) an Israelite in 3:4, “because they are suspect as to the taking of life,” and the rejection of a non-Jew circumcising a Jew in 3:12, “because they are suspect of bloodshed.” Rationales based on rabbinic law and thought include the prohibition of going to a town or nearby villages where there is a fair in 1:5, “because he appears to go to the fair,” and one Sage’s permission to sell a non-Jew a horse, “which does not perform any sort of labor on the Sabbath on account of which they are liable to a sin-offering.”

More than half of all of these non-biblical rationales in the *Tosefta* have to do with subjects not dealt with in the Mishnah. In just two cases does an identical statement appear in both the Mishnah and the *Tosefta* with the *Tosefta* providing a rationale that is missing in the other text, in *tosefta* 2:3 (equivalent to *mishnah* 1:6) and in 3:3 (equivalent to *mishnah* 2:1). An additional five *toseftot* contain both the statement and the reason as in the Mishnah: *tosefta* 2:9, identical with *mishnah* 1:9 with the addition of an attribution; *tosefta* 3:2, identical with *mishnah* 2:1 with the same rationale stated differently; *tosefta* 3:3, identical with *mishnah* 2:1; *tosefta* 6:8 identical with *mishnah* 3:8 except for different attribution; and *tosefta* 6:12, with an identical rationale to *mishnah* 4:2 and the law stated differently. Thus, just a small proportion of the rationales in the *Tosefta* are connected with passages identical to those in the Mishnah and seem to serve as commentary or explanation these passages.

Twenty of the rationales relate to topics covered in the Mishnah, at least indirectly. However, it is not clear in most of these cases that the Tosefta is providing commentary to the Mishnah, since the texts can be understood independently. For example, *tosefta* 2:8 deals with an Israelite renting houses, fields or vineyards to a non-Israelite. Non-Israelites and Samaritans are equated, but the land of Israel is distinguished from other places, and two opinions are given. This *tosefta* includes much of the content of *mishnah* 1:8 but with a number of differences. The following *tosefta* restates *mishnah* 1:9 including the rationale but omitting the proof text. It then differentiates other types of property from houses and ends with a statement and rationale regarding bathhouses identical with the *mishnah* except for the attribution. It is difficult to say whether these *toseftot* are “based on” or “provide commentary” for the material in the Mishnah. In any case, the Tosefta seems only slightly more likely than the Mishnah to provide reasons for its opinions—whether biblical, logical, or rabbinical—beyond its own authority.

Another notable characteristic of the Mishnah is the inclusion of alternative points of view. In fact, the Mishnah is a compilation of traditions that seems to maximize alternatives.²⁸ In *Avodah Zarah*, 26 of the 50 *mishnayot* include at least one difference of opinion.²⁹ In 11 of these more than two alternative opinions are offered, and four include more than three alternatives. However, a single statement within a *mishnah* is never extended by more than two levels of opinion. One ruling may be followed by an alternative, which may itself be followed by an alternative, but the argument never extends beyond this. Except for a few stories, there is no give and take in these *mishnayot*, no sense of a real conversation taking place, and no development of an argument through more than two steps. As Kraemer puts it, the Mishnah “tolerat[es] differences of opinion but with rare exceptions...ignore[es] the dialogues that such differences generated.”³⁰

Tosefta Avodah Zarah shares this trait with the Mishnah. Forty *toseftot* contain at least one alternative opinion; eleven of them contain two or more. If the Tosefta’s rulings are considered in relation to the Mishnah’s additional alternative opinions would be identified. Like its counterpart in the Mishnah, this tractate of the Tosefta contains few

extended arguments, and few of these appear to be real conversations among the Sages. Rather, they are editorial juxtapositions of alternative rulings.

Another striking feature of the Mishnah is that where differences of opinion are presented conclusions are very rarely drawn.³¹ We know from later tradition that the *Halakhah* usually follows the anonymous ruling or the one introduced by “the sages say” or the ruling of the majority, but most *mishnayot* that include alternative views do not indicate which is authoritative. This feature of the Mishnah is also characteristic of the Tosefta. Both texts resemble a book of taxonomy. They are concerned with classes of things and the hierarchies among these classes. Although generalizations are implicit in the classes and hierarchies, general principles are almost never stated. Specifics accumulate one after the other, refining and limiting generalizations. One is left with an impression of the great complexity of every subject and the refinement and nuance with which each ruling must be considered.³²

As noted above, Neusner considers the Tosefta’s continuities with the Mishnah to go beyond formal properties of language and structure to include “nearly the whole of the Mishnah’s program.”³³ Indeed, in broad outline, the two texts parallel each other closely, as the following summary of their contents indicates. Brackets indicate topics that are new to the Tosefta; otherwise, material listed in the Tosefta consists of additions, expansions, limitations, etc. on topics considered in the Mishnah.

Mishnah	Tosefta
<p>1. Prohibition of business dealings/appearance of dealings with idolaters around their festivals</p> <ul style="list-style-type: none"> -Definition of proscribed activities -Definition of the length of the prohibition -Definition of idolatrous festivals -Definition of the area of prohibition – inside/outside town, decorated shops Prohibition of selling certain goods to idolaters <p>-Things used in idol worship – small/large beasts, according to custom</p> <p>-Things that cause harm</p>	<p>1.</p> <ul style="list-style-type: none"> -Talking frivolously, asking after welfare, working with -In Exilic communities -Adjusting the day of the fair -Town, people, family that celebrates, fairs of empire/province -Traveling to a fair <p><Restrictions on priest contracting uncleanness abroad – to study Torah, to marry></p> <p><Something akin to gossip, usury, idolatry, violation of the seventh year></p> <p><Traveling with a righteous or wicked man></p> <p><Young and old></p> <p><Prohibition on teaching son a book in Greek></p> <p>-May sell to a merchant if...</p> <p>2. -Sale of beasts on trial, wild beasts</p> <ul style="list-style-type: none"> -Scrolls, etc./Samaritans

<p>-Things attached to the soil</p> <p>-Houses and fields in Israel, Syria and abroad</p> <p>-Dwellings and bath-houses</p> <p>Prohibition of assisting in the construction of certain government buildings and structures closely associated with idols</p> <p>2. Prohibitions of interactions of Israelites and idolaters</p> <p>-Leaving a beast with an idolater</p> <p>-Being alone with an idolater</p> <p>-Midwifery and suckling</p> <p>-Healing of bodies, cutting hair / limitation to private domain</p> <p>Prohibition of use and benefit of items from idolaters</p> <p>- <i>Ma'aseh</i> about R. Ishmael and R. Joshua</p>	<p><Prohibition and permission to attend amphitheater of idolaters></p> <p>-Samaritans</p> <p>-Fields</p> <p>3. Samaritans</p> <p>-Leaving a beast with their shepherd</p> <p>-Leaving a child with an idolater</p> <p>< Measures for protecting self if alone></p> <p>-Samaritan, Israelite cutting idolater's hair</p> <p>< <i>Am ha-aretz</i> and scrolls, etc.></p> <p><Regulations about sale and purchase of slaves – adults/minors, to and from <i>am ha-aretz/haver</i>/Samaritan/ “gentile,” circumcision/immersion/conversion, selling abroad, emancipation, domain></p> <p><Limitations on exchange of property in Israelite/idolater partnership></p> <p><Disposition of proceeds of business</p>
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<p>Prohibition of use but permission of benefit of items from idolaters</p> <p>Permission of use and benefit of items from idolaters</p> <p>3. Prohibition of idols/determination of status as idols</p> <p>Rules for disposal of idols</p> <p><i>Ma'aseh</i> about Israelites bathing in the bath-house of an idol</p> <p>Determination of the prohibited or permitted status of things used as idols or as places of idolatry – mountains, hills, houses, stones, <i>Asherot</i> and what is on them, buildings in proximity to place of idolatry</p> <p>Determination of the “benefit” from <i>Asherot</i></p> <ul style="list-style-type: none"> -Contracting uncleanness from them -Rules for annulling them <p>4. Determination of the status of stones near a Merkolis and objects found on/near it</p> <p>Determination of the status of a garden</p>	<p>conducted at an idolaters' fair></p> <p>Additional items, alternate rulings, <i>am ha'aretz</i></p> <p>4. <Prohibition of hoarding or exporting necessities></p> <p><Prohibition of living abroad – equivalent to idolatry></p> <p>5. Rings with seals, “set aside for”</p> <p>Items that have come in contact with a place of idolatry (6:2-3)</p> <p>Stoning those who worship hills, etc., annulling <i>Asherot</i> (6:8 - 11)</p> <p>6. Benefit from other items used in idolatry and those from the state (6:1, 8)</p> <p>And idol, determination of prohibited objects (6: 12-14)</p> <p>Ruling that annulment not possible (5:4-7), “set aside” (5:9-10)</p> <p><Renaming with euphemisms insulting to</p>
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<p>or bath-house of an idol</p> <p>Prohibitions connected with idols of Israelites and idolaters and their annulment</p> <p><i>Ma'aseh</i> about the existence of idolatry</p> <p>Determination/disposition of wine when an idolater has had contact with grapes or wine or has lien on it</p> <p>Prohibition and permission of Israelite work with idolaters on grapes</p> <p>Prohibition and permission of Israelite work with unclean Israelites on grapes and bread</p> <p>Prohibition and permission of wine left with an idolater – in public, in a city of idolaters, with a watchman, if the idolater has a lien on it</p> <p>5. Prohibition and permission of the wages of an Israelite laborer working with libation wine</p> <p>Determination of contamination by libation wine – imparting a pleasant flavor</p> <p>Determination of contamination of wine – assumption that it is watched, condition</p>	<p>idolatry></p> <p><Avoiding the appearance of idolatry></p> <p><Analogies with tossing stone to a <i>Merkolis</i> – “Like one who binds the stone in a sling”></p> <p>7. “not their custom”</p> <p>“Until he passes out of sight”</p> <p>Large loaves, in Syria</p> <p><Prohibition and permission of Israelite laborer buying food with idolater’s money in tithes etc.></p> <p><Permission of sealed wine with Samaritan and jugs of juice, vinegar, etc. with</p>
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<p>of seal, in different places, in a wagon, on a ship, in a shop, at the dining table, in time of war and peace</p> <p>Issues of possession related to libation wine in payment for work, in determining the transfer of contamination to utensils used in the transfer of wine</p> <p>Prohibition of mixtures</p> <p>-Libation wine and water mixed with acceptable liquids of like kind – if sufficient to impart flavor</p> <p>-Objects used in idolatry mixed with like objects</p> <p>Procedures for cleaning vats and other utensils</p>	<p>idolater></p> <p>8. Vat, ladle, siphon, jar</p> <p>Wine-vats and olive-presses, leaving unused</p> <p><Statement and discussion of Noahide Laws></p>
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The topics addressed in *Mishnah Avodah Zarah* are almost all at least touched on in the Tosefta counterpart; topics are addressed in roughly the same order, with considerable movement in chapters 5, 6, and 7. But the treatment of these shared topics varies in the two texts. Neusner identifies three kinds of texts in the Tosefta as a whole in relation to the Mishnah:

1. "Verbatim citations and glosses of sentences of the Mishnah"
2. "Freestanding statements that complement the sense of the Mishnah but do not cite a Mishnah paragraph verbatim...and can be fully understood only in dialogue with the Mishnah's counterpart"
3. "Freestanding, autonomous statements, formulated in the manner of the Mishnah but fully comprehensible on their own"³⁴

He suggests that while autonomous statements can always be understood on their own, without reference to the Mishnah, there are two types of such statements. Some concern “topics important to a passage in the Mishnah and are placed...in a position corresponding to the thematic parallel in the Mishnah”; however, the treatment of the topic in the two texts does not overlap at all. Others concern topics that are not considered in the Mishnah.³⁵ Neusner finds that the Tosefta makes autonomous statements “only seldom—for somewhat under a sixth of the whole of its volume.”³⁶

Neusner’s typology and his determination of the relationship of statements in *Mishnah Avodah Zarah* and their counterparts in the Tosefta yield some unexpected results.³⁷ Just 26 *toseftot* contain statements identical with statements in the Mishnah or statements that directly refer to statements in the Mishnah; in other words, just under one fourth of the *toseftot* in *Avodah Zarah* are directly related to the Mishnah text. The total number of such statements is somewhat higher since a number of *toseftot* contain more than one: 32 statements identical with the Mishnah’s in 18 *toseftot* and 22 direct references to the Mishnah in 15 *toseftot*. In addition, there are 31 statements in the Tosefta that Neusner identifies as concerning the same subjects addressed in the Mishnah in a related manner. These occur in 17 *toseftot* that do not also contain a more direct connection with a *mishnah*. This brings the total to 43 *toseftot* that contain links with the Mishnah, nearly 38 percent of the total.

However, it isn’t clear exactly what these overlaps mean in terms of the relationship between the texts. Neusner concludes, “The first two types of materials certainly were written after the closure of the Mishnah.”³⁸ But this conclusion ignores the possibility that identical and similar materials in the two texts come from a common source outside either of the two or are related in another way (e.g., a later addition), as suggested by Strack and Stemberger. A close examination of some of the material is instructive.³⁹

If the Tosefta is a commentary on the Mishnah, we might expect the earlier text to be quoted or referred to in the later one with the addition of explanatory or elaborative or

alternative materials. In addition, we might expect the Tosefta to be incomprehensible without reference to the Mishnah. The very first *tosefta* in *Avodah Zarah* exemplifies this pattern. Identical passages are italicized, and references to the Mishnah are indicated in brackets, following Neusner's determination of their connections.

1:1A. For three days before the idolatrous festivals of the idolaters it is prohibited to have business dealings with them—

1:1

A. Nahum the Mede says, One day in the Exilic communities before their festival it is prohibited [to do business with gentiles].

B. Under what circumstances [1:1A]? In the case of recurrent festivals, but in the case of festivals which do not recur, prohibited is only that day alone.

C. And even though they have said, *It is forbidden to do business with them* [1:1A]—

D. Under what circumstances?

E. In the case of something which lasts.

F. But in the case of something which does not last, it is permitted.

B. Neither to loan to them nor to borrow from them, neither to lend [money] to them nor to borrow [money] from them, neither to may repayment to them nor to accept (re)payment from them.

C. R. Judah says, One may be repaid by them [during these three days] since this causes them grief.

D. [The Sages] said to him, Even though it grieves them at the time they will [nevertheless] rejoice afterwards.

G. And even in the case of something which lasts, [if] one bought or sold it, lo, this is permitted.

H. R. Joshua B. Korha says, In the case of

any loan secured by a bond, one does not accept repayment from [a gentile].

I. But in the case of any loan which is not secured by a bond, one does accept repayment from [a gentile] [1:1D],

J. because one thereby saves [capital] from their power.

The *tosefta* begins in the middle of the conversation that the *mishnah* has begun. Without the identification of “the idolatrous festivals of the idolaters” from the *mishnah*, the reader would not know what subject the *tosefta* is addressing. Further, the Mishnah’s general principle prohibiting business with idolaters in the Land of Israel, to which *tosefta* 1:1A adds the alternative concerning Exilic communities, is not stated in the *tosefta*. The *tosefta* interjects the question of the kind of festival that requires business dealings to be suspended, a topic that isn’t considered in the Mishnah until 1:3. The *tosefta* provides a generalization—“recurrent festivals” or “something which lasts”—while the *mishnah*, characteristically, offers specifics (*calends*, etc.). While the *tosefta* does not repeat the kinds of business that are prohibited according to the *mishnah*, it does provide an alternative view with an new rationale on the one topic for which the *mishnah* has differing rulings.

Tosefta 1:1 clearly relies on the corresponding *mishnah* for the context in which it is to be understood. It provides commentary to the *mishnah*’s rulings, which are unstated, in the form of distinctions between Israel and the Diaspora and between recurring and non-recurring festivals. It also offers an additional opinion from a named Sage regarding one type of business transaction, which was disputed in the *mishnah*. On the basis of this comparison, the traditional characterization of the Tosefta as a commentary on the Mishnah—a source of additional details, distinctions, clarifications, and further statements of the *Tannaim*—seems apt.

An additional example suggests further complexity in the relationship of the two texts.

3:1 All images are prohibited

5:1

B. since they are worshipped once a year.

This is the opinion of R. Meir.

C. But the Sages say, Only such is forbidden as bears in its hand a staff or a bird or an orb.

A. And sages say, Prohibited is only one which has in its hand a staff, bird or sphere[3:1C]

B. sword, crown, ring, image, or snake.

D. Rabban Simon ben Gamaliel says, That which has aught whatsoever in its hand [is forbidden].

3:2 (deals with pieces of idols)

3:3A. If one find objects, and on them is a figure of the sun, [or] a figure of the moon, [or] a figure of a dragon, he must cast them into the Salt Sea.

C. And [those which are found] on objects of value—[3:3B]

B. Rabban Simon ben Gamaliel says [If the figures are on] precious [objects],

D. for example, silk, nose-rings, bracelets, or earrings –lo, these are prohibited.

C. they are prohibited,

E. But [those which are found] on objects of no worth—[3:3B]

D. [but] if on worthless [objects],

F. for example, pitchers, water-pots, frying pans, kettles, bowls, mats, or a ring – lo, these are permitted.

E. they are permitted [to be retained].

G. [If] one found a ring and on it was the image of the sun, moon, or a dragon, he should bring it to the Salt Sea.[3:3A]

H. And [this rule applies] also to the image of Isis or Serapis.

F. R. Yose says, One should grind them into dust and scatter [it] to the wind or throw [it] into the sea.

G. [The Sages] said to him, Even [if the dust be dispersed in the wind] it would become manure [and of benefit to the Jew],

H. As it is said, And there shall cleave naught of the doomed thing to thy hand.

Tosefta 5:1A again apparently makes reference to another text, beginning as it does with a statement concerning an unidentified “one” with something in its hand. In the identical statement in *mishnah* 3:1D, the referent is clear from the earlier statement identifying “images.” *Tosefta* 5:1B adds to the initial statement further objects that if found in the hand of an image would indicate that the image is an idol. Likewise, *tosefta* 5:1D and F add examples that clarify the preceding statements, which are identical with *mishnah* 3:3B and D, respectively. And *tosefta* 5:1H adds further images to those prohibited in the preceding statement, which is identical with *mishnah* 3:3A.

Thus, the *Tosefta* here seems closely connected with the comparable *Mishnah* text, apparently adding commentary in the form of additional examples that clarify the rulings that are repeated from the *Mishnah*. However, the relationship of the two is not straightforward. The *Tosefta* has eliminated several alternative statements offered in the *mishnah*: R. Meir’s prohibition of all images in 3:1A, Rabban Simon ben Gamaliel’s prohibition of all images with something in the hand in 3:1E, and R. Yose’s and the Sages’ statements about dispersing the dust of idols to the wind in 3:3F and G/H. Perhaps the *Tosefta* is only commenting on rulings that are decisive—or problematic, at least in its view. On the other hand, this does not seem to be the case in many other places in *Tosefta Avodah Zarah*, where a number of alternative statements are preserved, and it would be a surprising development in Rabbinic literature, which is known for its preservation of a variety of points of view on almost every topic. The reasons for the *Tosefta*’s selectivity aren’t clear.

Further, the Tosefta has changed the order of the statements in *mishnah* 3:3, dealing first with the value of the objects on which images are found and following with the statement regarding the destruction of certain objects (the *tosefta* has “a ring” rather than “objects”). This change in order has a substantive effect: the *mishnah* seems to limit the requirement to destroy objects containing the images of the sun, etc. to those of value, while the *tosefta* seems to apply the value test to images with certain objects in their hand. The meaning of the differences between the *tosefta* and the *mishnah* are again unclear.

In any case, very few *toseftot* in *Avodah Zarah* appear to depend so closely on the corresponding *mishnayot*, with the Tosefta text incomprehensible without the Mishnah and with commentary on Mishnaic rulings that are stated either in identical form or referred to directly. Just 13 percent of *toseftot* are dependent on the Mishnah in this way. All the rest of *Tosefta Avodah Zarah* can be understood independently of the Mishnah; that is the *toseftot* are comprehensible on their own or in relation to the preceding Tosefta text but without reference to the Mishnah. About 27 percent of the *toseftot* are independent statements that deal with matters addressed in the Mishnah in a manner complementary to that of the Mishnah, like Neusner’s second category except that they are comprehensible without reference to the Mishnah. However, a majority of *toseftot* in *Avodah Zarah* (60 percent) fall into Neusner’s third category: “autonomous” statements that deal with topics of interest to the Mishnah but in a way that does not overlap the Mishnah (21 percent) or statements that deal with topics not addressed in the Mishnah (39 percent).⁴⁰

Among the *toseftot* that deal with matters of concern to the Mishnah in a similar manner but with clarifications, additions, extensions, limitations and new considerations are the following: extension of the transactions with idolaters prohibited on their festivals to talking frivolously and asking after their welfare (with exceptions, 1:2, 3) and to situations in which Israelites and idolaters work together in various contexts (1:3); extension of the prohibition of an idolater cutting an Israelite’s hair to an Israelite cutting an idolater’s hair and to regulations concerning Samaritans in similar circumstances

(3:6); additions to the items that may or may not be bought from or sold to an idolater to include scrolls and the like if written properly, slaves (3:11, 12, 16), purchases made in partnership (3:17); extension of the category of idols to include images on rings (5:2); clarifications and variations of rulings on the annulment of idols and pedestals (5:5, 6, 9, 10); extension of contamination from people and places connected with idolatry (6:2, 3); extension of prohibited practices to include tossing stones to a *Merkulis* and analogous actions (6:15, 16, 17, 19); and limitations on the prohibition of idolaters handling grapes (7:4, 5, 6). There are many others.

Among the *toseftot* that concern matters that are not addressed in the Mishnah are the following: advice on traveling with a righteous person (1:17) and not traveling with a wicked person (1:18); rulings regulating transactions with a Samaritan and an *am ha'aretz* (3:1, 7, 8, 9, 10, 13, 7:15); a ruling concerning teaching a book in Greek (1:20); rulings on attending the amphitheaters of idolaters (2:5, 6, 7); rulings on selling slaves abroad (3:8); rulings on storing essential and unnecessary commodities or profiting from the sale of these items during a famine (4:1); rulings on exporting essential commodities from the Land of Israel (4:2); rulings on living abroad (4:3, 3, 5, 6); a ruling on renaming places with euphemisms insulting to idolatry (6:4); rulings on avoiding the appearance of idolatry (6:4, 5, 6) or the mention of an idol (6:11); and discussion of the Noahide laws (8:4, 5, 6, 7, 8).

The following paragraphs illustrate some of the issues involved in comparing the two texts.

4:4

A. An idol of a heathen is prohibited forthwith,

B. but that of an Israelite is not prohibited

5:3A. He who purchases metal filings from gentiles and found an idol therein takes it and tosses it away,

B. and the rest – lo, this is permitted.

C. An Israelite who found an idol before it has come into his domain may tell a gentile to nullify it.

provided it has not been worshipped.

C. A heathen can disannul his idol or that of his fellow,

D. but an Israelite can not disannul the idol of a heathen.

E. If [a heathen] disannulled an idol, he has disannulled all appertaining to it;

F. if he disannulled everything pertaining thereto,

G. then these things that pertain to it are permitted,

H. but [the idol] itself is prohibited.

D. For a gentile has the power to nullify an idol, whether it belongs to him or to his fellow [4:4C],

E. whether it is an idol which has been worshipped or whether it is one which has not been worshipped,

F. whether it is inadvertent or deliberate,

G. whether it is under constraint or willingly.

H. But an Israelite who made an idol – it is prohibited,

I. even though he has not worshipped it [vs. 4:4B].

J. Therefore he has not got the power to nullify it.

5:4A A gentile who made an idol – it is permitted until it has been worshipped [vs. 4:4A].

B. Therefore he has the power to nullify it.

C. Rabbi says in the name of R. Jacob, If an Israelite made it to begin with, he has not got the power to nullify it.

5:5A. A gentile who sold an idol to people who worship it – it is prohibited.

B. If he sold it to people who do not worship it, it is permitted.

C. One may lend money on the strength of it [as a pledge].

D. [If] a wreck fell on it, if a river swept it away, or thugs grabbed it –

E. as in the case of the war of Joshua –

F. if the owner is going to go looking for it, it is forbidden.

G. If not, it is permitted.

5:6A. The pedestals which gentiles set up during the persecution [by Hadrian] –

B. even though the time of persecution is over –

C. lo, these are forbidden.

D. Is it possible that an idol which a gentile nullified – is it possible that it should be deemed prohibited?

E. Scripture says, The graven images of their gods [you shall burn with fire] (Deut. 7:25).

F. That which he treats as a god is prohibited.

G. And that which he does not treat as a god is permitted.

H. Is it then possible that an idol which a gentile nullified should be deemed permitted?

4:5A. How does [a heathen] desecrate it?

B. If he cut off the tip of its ear, [or] the point of its nose, [or] the end of its finger, or if he dented it even though he did not diminish its material,

C. then he has disannulled.

D. If he spat into its face, [or] micturated before it, [or] dragged it about, or threw excrement at it,

F. this is not disannulment.

G. If he sold it or gave it as security, Rabbi says, He has disannulled,

H. but the Sages say, He has not disannulled.

I. Scripture says, The graven images of their gods...

J. Whether he treats it as a god or does not treat it as a god, it is forbidden.

5:7A. How does one nullify [it]?

B. R. Meir says, [It is not nullified] unless one will hit it with a hammer and do damage.

C. R. Simeon says, Even if one pushed it down and broke it and it fell, lo, this is an act of nullification.

5:6A. An idol whose devotees have abandoned it in time of peace is permitted,

B. but if in time of war it is prohibited.

C. The pedestals for idolatrous statues for kings – these are permitted since they were set up when the kings pass by.

D. And Sages say, A gentile nullifies an idol belonging to himself or to an Israelite.

E. But an Israelite does not nullify an idol belonging to a gentile [cf. 4:4C-D].

F. R. Simeon b. Menassia says, An idol belonging to an Israelite –it is never subject to nullification under any circumstances.

Both the Mishnah and Tosefta in these examples concern the issue of nullifying idols, differentiating those belonging to idolaters and to Israelites and the efficacy of the two groups in performing nullification. Both also address the issue of what kind of action

constitutes nullification. On my reading, all of the *toseftot* can be understood independently of the Mishnah, although in some cases they make additions or provide explanations for the latter or cite alternative rulings to those in the *mishnayot* and in other cases they diverge more dramatically from the *mishnayot*. Each *tosefta* includes both types of material.

While mishnah 4:4A-C makes a blanket statement permitting an idolater to annul an idol belonging to him or to his fellow, *tosefta* 5:3E- G identifies all of the circumstances under which the annulment of an idol by an idolater is allowed, in one circumstance (E) seeming to contradict *mishnah* 4:4A. *Tosefta* 5:5A-B provides explanations for *mishnah* 4:5G, detailing the conditions on the sale of an idol that constitute annulment. Likewise, *tosefta* 5:5C elaborates on *mishnah* 4:5G on using an idol as a security. *Tosefta* 5:7B-C describes methods of annulling idols that are not included in the Mishnah.

In other cases the Tosefta provides rulings on issues related to the *mishnayot* but not included in them. In 5:3H-J and 5:4A-C the Tosefta deals with idols made by idolaters and by Israelites (!). *Tosefta* 5:5D-F raises the issue of whether the owner of an idol considers it lost in determining its annulment. *Tosefta* 5:7F adds a ruling in the name of R. Simeon b. Menassia that the idol of an Israelite can never be nullified. And at great length, *tosefta* 5:6D-J deals with the question of whether idols can be nullified at all.

Such additions, explanations, limitations, alternative rulings and new considerations found in the Tosefta are the source of one of the most noticeable differences in the two texts— the Tosefta's greater length. *Tosefta Avodah Zarah* contains eight chapters, compared to the Mishnah's five, a 60 percent expansion. The average number of *toseftot* in each chapter of *Tosefta Avodah Zarah* is 14, compared with the Mishnah's 10, a 40 percent expansion. Overall, *Tosefta Avodah Zarah* contains 114 *toseftot* compared to 50 *mishnayot* in the Mishnah text, a 125 percent expansion. In other words, the Tosefta is 2.3 times as long as the comparable Mishnah text in *Avodah Zarah*. The *toseftot* and *mishnayot* vary in length and appear to be comparable in the two texts.⁴¹

In addition to being longer, the Tosefta is notably more discursive in character. This is the result of two tendencies. One is the presence of additional material, particularly statements at best indirectly related to the central concerns of the Mishnah. While *Mishnah Avodah Zarah* contains very few *mishnayot* that introduce subjects other than idolatry and these are related to the central subject at least indirectly, nearly one-third of the *toseftot* in its counterpart contain such material. In many cases, these digressions from the central topic are long and detailed discussions of other topics. For example, in the first chapter, which contains 21 *toseftot*, the better part of one tosefta and all of another concern priests contracting uncleanness abroad; three concern the use of “dust” to mean “something akin to” in relation to usury, the seventh year, and gossip; two concern traveling with a righteous man or a wicked man; and one reports a saying of R. Simeon b. Eleazar about the instructions of young and old concerning building and destruction. Other chapters contain similar quantity of loosely related material. While these “digressions” have an usually have an indirect connection with the central concern of the chapter, their volume and variety contribute to a sense of both expansiveness and dispersion.

The second difference is the more diffuse, digressive nature of much of the Tosefta material. At least one source of this characteristic appears to be editorial lapses—repetitions (for example, 1:5 and 1:6), contradictions that are not clearly stated as alternatives as they typically are in the Mishnah (for example, 1:6D-E and 1:16 or 1:21F and 2:1F), displaced material (for example, 1:8A-B and 3:4), and the like. These may result from several sources: the importation of whole elements from other collections of *baraitot*, late additions from various sources, and the neglect that the Tosefta likely suffered as an uncanonized text, as Strack and Stemberger suggest.⁴² Without the careful editorial hand of a Judah Ha-Nasi, the Tosefta lacks the clear structure and controlled content of the Mishnah.

Attitudes toward the Non-Jew in *Mishnah* and *Tosefta Avodah Zarah*

Judging from the few biblical citations in *Mishnah Avodah Zarah* and the implications of its rulings, its attitude toward the non-Jew is based on the Bible’s antagonism toward

idolatry and scripture's fundamental distinction between gentiles—who are idolaters—and Israelites—who worship the one God. But the Mishnah goes far beyond the Bible in its consideration of many specifics of law.⁴³

The Bible is concerned with removing idolatry from the Land of Israel and from the practice of Israelites (e.g., Exod. 23:13, 23-25; Num. 31; Deut. 7:25; 12:2-3; 13:18). It states these concerns in categorical terms, for example,

When the Lord your God brings you to the land that you are about to enter and possess, and He dislodges many nations before you—the Hittites, Girgashites, Amorites, Canaanites, Perizzites, Hivites, and Jebusites, seven nations much larger than you—and the Lord your God delivers them to you and you defeat them, you must doom them to destruction: grant them no terms and give them no quarter. You shall not intermarry with them: do not give your daughters to their sons or take their daughters for your sons. For they will turn your children away from Me to worship other gods, and the Lord's anger will blaze forth against you and He will promptly wipe you out. Instead, this is what you shall do to them: you shall tear down their altars, smash their pillars, cut down their sacred posts, and consign their images to the fire. (Deut. 7: 1-5)

Both the idolaters and the objects and places of idol worship are to be completely destroyed, even mention of idols is to be eliminated (Ex. 23:13), and Israel is to shun the practices. Joshua is said to accomplish the destruction of the Canaanite nations (Josh. 10:40). On the other hand, other traditions recorded in the *Tanakh* suggest that this wholesale destruction was not actually carried out.⁴⁴ Further, individual non-Israelites were sometimes praised and honored (e.g., Jethro in Exod. 18; Rahab in Josh. 2, Naaman in 2 Kings 5; and, of course, Ruth), and a whole class of "others," *gerim*, were extended considerable rights, including participation in aspects of the cult (for example, Lev. 17:33-34; Deut. 1:16, 17:12, 12, 20:2, 24:14). Whether or not all outsiders were eliminated from the land, idolaters as a group are reviled in the Bible because they practice abominations (e.g., Deut. 12:29-31; 18:9-12; 20:18) and because, within the holy land, they present a risk to the children of Israel—through intermarriage and simply by example they may lead the Israelites to violate the covenant.

The Mishnah, in contrast, does not even imagine a world in which Israel can separate itself entirely from idolaters. In this respect it seems to reflect the reality of Palestine in the first centuries of the Common Era and not an idealized past or future.⁴⁵ It applies the Bible's goals of separating Israel from idolatry to a world where Jews not only co-exist with non-Jews but where the two groups live side by side, both in Israel and in other lands, with Jews usually a powerless minority.⁴⁶ Adjustment to this situation requires a degree of complexity in the law that is not found in the Bible. Neusner summarizes this perspective:

The *Halakhah* [i.e., the Mishnah's system of rulings] distinguishes Israel from the gentiles, and it does so strictly within the limits of Scripture's law. By both parts of the Torah, gentiles by definition are idolaters, and Israelites by definition are those that worship the one, true God, who has made himself known in the Torah. In the Oral Torah, that is the difference—the only consequential distinction—between Israel and the gentiles. The *Halakhah* takes as its problem the concretization of that distinction, the demonstration of where and how the distinction in theory makes a huge difference in the practice, the conduct, of everyday affairs.⁴⁷

The rulings in *Mishnah Avodah Zarah* imply a world in which Jews and non-Jews interact frequently and in a variety of contexts: they trade, lend and borrow goods and money from each other (1:1); they buy and sell goods of all sorts to each other, including food, in shops and otherwise (1:5, 1:6, 1:7); they work together (1:7, 4:9, 5:1, 5:3), and Jews work for non-Jews (e.g., 5:1, 5:7), although the reverse is not implied; they live next door to each other (3:6); non-Jews eat with Jews in the Jew's house (5:5); Jews and non-Jews bathe together in public baths, and Jews enjoy gardens belonging to non-Jews (3:4, 4:3); and non-Jews deliver Jewish babies and nurse them and treat ill Jews under some circumstances (2:1, 2:2). This is apparently a world of considerable and close interaction between the two groups, but these interactions are all restrained by the prohibition against idol worship.

Two general considerations seem to underlie most of the Mishnah's requirements limiting contact with idolaters: Jews must avoid assisting in the practice of idol worship by idolaters, and Jews must themselves avoid practicing idol worship and contacting any activity or object that might lead them to idol worship.⁴⁸ Each of these general prohibitions is supported somewhere in the text with biblical citations: the former Deuteronomy 7:5 (see above), 7:6, and 12:2; the latter Deuteronomy 7:25-26 and 13:18.

The prohibition of contributing in any way to the possibility that an idolater will practice idolatry is stated explicitly in *mishnah* 2:1: a Jewish woman may not deliver a non-Jewish baby or nurse it "because she would be aiding in the birth of a child for idolatry."⁴⁹ The prohibition against facilitating the practice of idol worship in any way, materially or psychologically, also seems to underlie the prohibition against commerce of all sorts with non-Jews close to and on their festivals. In 1:1 R. Yehudah makes the rationale explicit when he states that collecting debts from idolaters in this period is allowed "because it saddens them," although the Sages say that although they may initially be sad they will ultimately be happy to have paid the debt and, thus, prohibit collecting debts. In other cases, the prohibition is implicit. Certain items that are always used for idol worship or usually used for idol worship and taken to be for that purpose cannot be sold to idolaters at any time, for example, wine and vinegar, skins with cuts near the heart (2:3) and images and parts of images of certain kinds and vessels of certain kinds (3:3, 3:4). Idols themselves must be utterly destroyed (3:3).

In addition, a Jew must carefully guard against practicing idolatry himself. For example, even where he may lease a building to an idolater, he may not lease living quarters because the idolater might bring an idol into the Jew's home, violating the prohibition of bringing "an abomination into your house" (Deut. 7:26, cited in *mishnah* 1:9). Related to the prohibition against a Jew practicing idolatry is the prohibition of using or benefiting from certain items related to idolatry, for example, containers that held wine or vinegar made from wine (2:3), houses built for idol worship (3:6), *Asherot* (3:7 and following), and wages for work involving libation wine (5:1). In at least one case, the appearance of practicing idol worship seems to be as important in restricting behavior as the practice

itself: in 1:4 a Jew may travel to a city during a festival if the road goes to another place and he doesn't appear to be going to celebrate with them.⁵⁰

Very few of these prohibitions are absolute; in fact, in almost all cases, they are fairly narrowly defined. This probably reflects the Mishnah's aversion to generalizations and its tendency to define and quantify, as well as sensitivity to the practical, economic consequences of the prohibition, at least by some of those providing rulings. If the burdens of the prohibitions became onerous, they might become too difficult to maintain: Rabbinic legislation was concerned with "creating a realistic guarantee for observance."⁵¹ Thus, the Mishnah usually defines the prohibition narrowly to allow benefit and use wherever the likelihood exists that idol worship is not involved.

For example, regarding commerce with idolaters, there are a few occasions when any transaction with an idolater is prohibited (three days before a festival, 1:1),⁵² but on other occasions, most economic transactions with an idolater are allowed, e.g., after an idolatrous festival (1:2), even with one returning from a place of idolatry (2:3). Further, the festivals are limited to major events and do not include individual feast days, except for the individuals involved (1:3). Trade in areas near sites of idolatry and undecorated shops, in other words, with people who are not likely to be currently engaged in idolatry or preparing to celebrate an upcoming festival, is also allowed, even in a place (near) where others are about to celebrate a festival (1:4).

Similar limitations of restrictions are developed for objects. Those clearly used in idol worship are strictly prohibited for use and for benefit, but many others that are usually used for idolatry but which apparently aren't intended for that purpose in a particular case are allowed either for benefit or for use as well (1:5), even including images and fragments of idols (3:1), idols and *Asherot* themselves that have been annulled (3:10, 4:4, 4:5), and wine, the most closely regulated substance with a connection to idolatry, in some circumstances (2:4, 4:8-12, 5:1-11). Houses, stones, and *Asherah* trees that were not made or planted for idolatry in the first place are allowed once idolatrous additions are removed (3:7); stones that do not appear to be part of a *Merkulis* are permitted (4:1);

and wine before it reaches the vat is permitted (4:8), as is wine into which libation wine has spilled, if the benefit of the libation wine has been removed (5:11, or not, depending on which view is accepted). In some cases, wine that an idolater had contact with could be permitted, even for drinking (4:8, 4:10) as could foods on which libation wine spilled (5:2) or liquids into which libation wine spilled (5:8).

Though the Mishnah carefully defines the rules, limiting them to specific cases, the Sages were not lenient in the application of established rules. For example, the prohibition on benefiting from things associated with idolatry is applied with stringency in two *mishnayot*. In 3:3 a Jew is prohibited from scattering the ashes of a destroyed vessel used in idolatry, as opposed to throwing them in the sea, because the ashes become fertilizer, providing a benefit. In a similar fashion, *mishnah* 3:8 applies the prohibition of benefit from an *Asherah* tree to the sowing of vegetables under it during the hot season, but not to sowing under its shade in the rainy season—when the shade would not confer benefit. R. Yose extends the prohibition to the rainy season when the benefit comes from the fertilizer provided by the leaves of the tree.

Rabbinic rules not strictly related to idol worship influence some restrictions on interactions with non-Jews in *Mishnah Avodah Zarah*. For example, a Jew may not sell an idolater anything attached to the soil or lease him houses or fields in the Land of Israel, because of the special holy status of the land (1:8). Where a particular interaction with idolaters, such as the sale of animals, is customary, it is allowed (1:6). Where an interaction with an idolater might lead to the violation of Shabbat or another *mitzvah*, although it would not violate the prohibition on idol worship, it is forbidden. For example, selling an idolater a large animal which might work on *Shabbat* (1:6) and leasing an idolater a bath house which the idolater might heat on *Shabbat* (1:9) are prohibited even when they would only give the appearance that the Jew had violated the *mitzvah*.⁵³ Rules regarding contributing to the impurity of the fruits the Land of Israel apply whether the source of impurity is a ritually unclean Jew or an idolater (4:9). General rules of koshering apply to utensils and wine vats purchased from gentiles (5:11, 5:12). General rules of mixtures of like and unlike substances (5:8) and of flavor that

imparts benefit (5:2) apply to contamination with substances connected to idol worship. General rules of the transfer of ritual impurity also apply to idolatrous objects (3:6, 3:8). In these cases, the issue of idolatry falls within Rabbinic dictates with wider application.

All of the above regulations governing relations between Jews and idolaters are part of the general prohibitions against a Jew contributing to the practice of idolatry or practicing idolatry himself or to other provisions of Rabbinic law. A few *mishnayot* seem to go beyond these considerations and, perhaps, suggest something about the underlying attitude of the Sages toward idolaters. Particularly striking are the restrictions and accompanying rationales in *mishnah* 2:1 (and continuing in 2:2). Jews are prohibited from placing their animals in the inn of an idolater “because they (idolaters) are suspected of [using beasts] for carnal connexion.” A Jewish woman may not be alone with an idolater “since they are suspected of lechery.” And a Jewish man may not be alone with an idolater “for they are suspect of shedding blood.” Similarly, an idolater may not nurse a Jewish baby, except in the Jewish home, and may not be hired to treat a sick Jew or cut the hair of a Jew, except where others are present.⁵⁴ These rulings echo the biblical perspective of idolaters: they are people who practice abominations—human, and especially child, sacrifice and sexual violations in the service of their gods (Lev. 18:3-27; Deut. 18:9-14), and they are collectively the enemies of Israel. They are not to be trusted with Jewish life or chastity (even that of animals). For the Sages, the only check on their behavior is the presence of others in the public domain.

One could interpret these *mishnayot* in another way—in line with the general prohibition against contributing to the idol worship of others. Kehati notes that some commentators explain these rulings on the basis of the prohibition “Do not place a stumbling block before the blind.” The rationale is as follows: since idolaters are descendants of Noah, who are prohibited by the Noahide covenant from practicing idol worship, as well as adultery and murder (and four or up to 26 additional commandments), facilitating idol worship by being alone with an idolater or leaving animals in his inn violates the injunction of Lev. 19:14.⁵⁵ Thus, these rulings fall under the general consideration of not facilitating idolatry.

The latter interpretation is possible; however, it sounds rather forced, an attempt by the commentator to minimize the negative character attributed to idolaters by these rulings. In a similar vein, Hameiri comments on *mishnah* 2:1 that these rulings apply to an earlier time, when idolaters behaved in the manner portrayed in the Bible, but they do not apply to the time of the Sages, and certainly not to Hameiri's time:

It is evident that these matters refer to the times when those people were idol worshippers, polluted by their deeds and debased in their conduct, as it is stated briefly (Lev. 18:3) "After the deeds of the land of Egypt where you dwelt shall you not do, nor do you according to the deeds of the land of Canaan whither I bring you." But as for other peoples who are restrained by the norms of religion, who avoid such base conduct and in fact impose punishment for it, these statements evidently do not apply.⁵⁶

Perhaps a view more in keeping with the spirit of the times is expressed in the *Jewish Encyclopedia*:

Greeks, Syrians, and Romans, the peoples with whom post-exilic Israel had incisive relations, were not animated by a spirit apt to engender in the Jew a responsive sentiment of regard. Nor were their morals...such as to allay the apprehension of faithful Jews as to the probable results of contact. The Maccabean revolution, the struggle against Hellenism, the rise against Rome under both Titus and Hadrian, are the historical background to the opinions expressed concerning non-Jews and the enactments adopted against them.⁵⁷

While acknowledging the genuine mistrust and even animosity toward the non-Jew at times in Jewish history, the authors of this article still consider the Rabbinic attitude more tolerant than it might have been, continuing as follows.

Yet withal, both relatively—by comparison with the attitude of the Greek world toward the non-Greek (barbarian), or with the Roman treatment of the non-Romans (the "pagani")—and absolutely, the sentiments of the Jew toward the non-Jew were superior to the general moral and mental atmosphere.⁵⁸

Thus, the authors consider “the views of the Tannaim concerning Gentiles [as] influenced largely by their own personal temper and the conditions of their age....—[in which] the Jews [were] engaged in a bitter struggle for self-preservation and exposed to all sorts of treachery and suffering from persecution” and yet not as hostile as might be expected.⁵⁹ The content of *mishnah* 1:7 may provide some support for this view; here the prohibited things are not directly concerned with idol worship but rather with the social and legal world of Rome, in which lions and bears and the courts and stadiums were all used as instruments of oppression of Jews (and others).

It is relevant to consider, in this regard, that the Sages treat the prohibition against idolatry much as they do other types of ritual impurity and their suspicion toward idolaters mirrors their lack of trust in others. Thus, the impurity conveyed by a place of idolatry is like that conveyed by a *sheretz* or by a menstruant (3:6). And the impurity conveyed by an idolater on grapes—produce of the land of Israel—is like that conveyed by a Jew who treads or harvest grapes or kneads or rolls bread while ritually impure (4:9). Likewise, as noted above, rules that apply to mixtures of impure and pure substances in general also apply to substances connected with idol worship.

The trustworthiness of idolaters is frequently questioned in *Mishnah Avodah Zarah*. For example, milk (2:6 and 2:7) and wine (4:11, 5:3, 5:4, 5:5) left with an idolater are permitted if they are in the public domain or if the Jew leaves them briefly, not informing the idolater that he is going away long enough for milk from an unclean animal to be added or for the wine to be made into libation wine. The idolater doesn’t act with impunity; apparently he wants to do business with the Jew and won’t risk publicly contaminating something. But if he is not watched, he can’t be trusted to maintain the purity of the food—whether through ignorance or through unscrupulousness is not indicated. Interestingly, an idolater who sells olives in round loaves is compared in trustworthiness to a *Kohen*, who might be tempted to sell *terumah* as *hullin* (2:7).⁶⁰ Elsewhere in a number of places in the Mishnah, the Sages show mistrust for the scrupulousness or the ability of ignorant Jews in keeping the *mitzvot*. Steinsaltz notes

that the Sages adopted many restrictions on relations between “the common person” (*am ha'aretz*) and “the colleague” (*haver*) in the Mishnaic period, especially in matters of ritual purity and tithes.⁶¹ As the authors of the *Jewish Encyclopedia* article indicate, the contempt of the early Sages toward non-Jews “was not deeper than their contempt for the Jewish ‘*am ha-arez*’ (the unlearned, suspected always of laxity in religious duty).”⁶²

The Mishnah does not seem to be entirely consistent regarding the trustworthiness of idolaters. While one cannot count on the idolater to separate tithes or be scrupulous in other aspects of the law, the word of the idolater appears to be reliable in some things. In 1:5, the anonymous ruling holds that a Jew is permitted to sell items usually used in idol worship, like fruit of cedars and white figs on their stalks, if the idolater did not specify that he was purchasing these items for the purpose of idol worship. Apparently, the idolater’s statement of his intentions can be relied on such cases.

On the other hand, some restrictions on interactions with idolaters don’t appear to be connected with idol worship. *Mishnah* 2:6 deals with a number of foods belonging to idolaters that may not be eaten though they are not forbidden for benefit. Among these are foods that are likely to have wine or vinegar made from wine added to them, raising the possibility of libation wine. However, most of the items identified in the *mishnah* do not have anything to do with idolatry: milk milked by an idolater without being seen by a Jew, bread, oil, boiled food, some fish, and spices that might be contaminated by a carcass. For some of these, as noted above, general considerations of *kashrut* appear to be involved rather than the issue of idol worship—milk, some fish, and spices. However, bread, oil and some cooked foods seem to fall into another category. Based on the Gemara, Kehati attributes these restrictions to the prohibition on intermarriage—meals taken together providing opportunities for socializing and intimacy.⁶³ This rationale is not stated in the Mishnah, and the situation of a Jew eating with an idolater in the Jew’s home is treated in *mishnah* 5:5 as an occurrence that is not exceptional. The reason the Mishnah places restrictions on all of these foods here is open to interpretation.

Overall, on the basis of the evidence in *Avodah Zarah*, the Mishnah appears to take a measured approach to contact with idolatry and idolaters, based on the two underlying considerations of not contributing to and not practicing idol worship, while at the same time acknowledging the frequent interaction that necessarily occurs between Jew and idolater. For the most part, the Tosefta accepts this approach. The world of the Tosefta is a place where Israelites and idolaters are in close, daily contact. Occasions of contact have expanded in the Tosefta to include a greater variety of working relationships, including partnerships, attendance at amphitheaters, and occasions when Israelites are alone with idolaters. The Sages are concerned with maintaining separation, and at the same time they recognize the need to operate within this world.

A number of opinions offered in the Tosefta seem to incline toward leniency in striking a balance between separation and contact, particularly where business dealings are concerned. For example, business transactions with idolaters during their festivals are permitted after the fact (1:1G)⁶⁴; selling idolaters pigs and wine is permitted without scruple that they might be used in idolatrous worship as long as the idolater does not explicitly announce that this is the case (1:21F-G); purchase of cattle for a sacrifice from idolaters is permitted without scruple that the animal had been used for bestiality, set aside for idolatrous worship, or even worshipped (2:1G-H); and an Israelite is permitted to assist an idolater in the production of wine “until he passes out of sight. Once he has passed out of sight, he may turn the wine into libation wine [but Israelites are not responsible for the fact]” (7:1E-F). In a similar way, an Israelite may profit from a drop of libation wine left in an idolater’s flask (7:17). These rulings almost seem to amount to a tacit acceptance of idol worship by idolaters and a relaxing of some rules prohibiting Israelites from aiding in the practice, as long as they do not knowingly do so. This sort of loosening of restrictions would make sense in a world where commercial interaction between the groups was a constant, daily occurrence.

Several additional opinions ease working relationships between Israelites and non-Israelites. The Tosefta allows idolaters to be involved in the production of bread and cheese with Israelite supervision (4:11) and in the handling of grapes in many situations

where “it is not their custom to make libation wine” (7:3-5). The Tosefta reiterates the Mishnah’s permission of benefit from libation wine within an on-going business relationship established on acceptable grounds (M 5:1) and suspends the rules regarding tithes when an Israelite worker uses his non-Israelite employer’s money, thus making the working life of the Israelite feasible (7:10).

In a good example of the constant tension between leniency and restriction that characterizes these Rabbinic texts, the Tosefta first extends the prohibition of transactions with idolaters on their festivals to include talking frivolously and asking after their welfare (1:2B-C) but then immediately permits asking after their welfare when they meet routinely (1:2D) and “for the sake of peace”/ *mipnei darkhei shalom* (1:3A). Although this latter concept does not appear in *Mishnah Avodah Zarah*, it is found elsewhere in the Mishnah. It appears in the context of establishing rights among the three categories of Israelites and among other sorts of claimants (e.g., water rights and conditions of theft in *Gittin* 5:8 and *Shekalim* 1:3), in the context of dealings between a *haver* and an *am ha’aretz* (*Shevi’it* 5:9/*Gittin* 5:9), and in the context of relations between Israelites and non-Israelites in the Sabbatical year (*Shevi’it* 4:3 and 5:9) and at other times (*Gittin* 5:8). For the sake of peace, greetings may be offered and gleanings, forgotten sheaves, and the corners of the fields are to be left for non-Israelites. While these rulings acknowledge the advantage of allowing certain interactions with non-Israelites in the interests of making social life easier, they do not repudiate the negative view of idolaters expressed elsewhere in the Mishnah and repeated in the Tosefta (3:2-5). It may be necessary for Israelites to see to and ask after the welfare of non-Israelites in order to prevent unnecessary hostility, but the texts do not suggest that this is done because of they are, after all, human beings or because, outside of their idolatrous practice, their behavior is generally acceptable.

In fact, the Tosefta reiterates in even greater detail the Mishnah’s characterization of idolaters as practitioners of bestiality and murder (3:2-3:5), repeating the rationale that “they are suspect as to the taking of life” or “bloodshed” five times (3:3 – twice, 3:4, and 3:12 – twice).⁶⁵ The text does not state the general prohibition of being alone with idolaters but states the specific situation of a bathhouse or urinal (3:4E). Acknowledging

that situations in which an Israelite is alone with an idolater will arise the Tosefta discusses precautions that should be taken when an Israelite is walking with an idolater—arming himself and misleading the idolater (3:4)—and when an idolater is cutting an Israelite’s hair—watching in the mirror (3:5). This rationale for caution in dealings with idolaters is said in the name of R. Meir and of the Sages (in two rulings in which they differ with R. Meir) and of the Stam; in all cases, the wording is almost identical, giving the impression of a catchphrase of a sort. Perhaps these warnings respond to widely held fears among the public concerning their safety at those vulnerable moments when they found themselves alone with idolaters.⁶⁶ Or perhaps they respond to real dangers faced by Israelites at the time. In any case, they seem to strengthen the negative view of non-Israelites found in the Mishnah: these are people who practice abominations. And it should also be noted that despite the opinions noted above that suggest a more lenient attitude, many rulings in the Tosefta repeat or extend the Mishnah’s rulings requiring rigorous separation of Jew and idolater.

Several possibilities of interaction between Israelite and idolater or idolatry that do not appear at all in the Mishnah are discussed in the Tosefta. In two instances, the Tosefta prohibits even the mention of idolatry: tosefta 6:4 requires renaming places that compliment idolatry with euphemisms that insult it, and 6:11 prohibits mentioning a place of idolatry even in an off-hand remark. Tosefta 6:4 also prohibits an Israelite from acting in a way that appears to be idolatry, for example, bending in front of an idol to pick up dropped coins. However, if the action can be done in a way that avoids the appearance of idolatry or in private, it is allowed. Tosefta 6:10 prohibits climbing atop an idolatrous pedestal, even to defile it. All of these cases seem to involve avoiding the public appearance of support of idolatry by Israelites in the most rigorous way possible.

In another new case of interaction with idolatry in the Tosefta, R. Joshua rules that a man should never teach his son a book in Greek, because this would take him away from Torah study, which—as shown in the proof text—he must engage in all of the time (1:20). This ruling is unequivocal in forbidding the study of the books of the larger culture, reasoning that this pursuit would lead to the neglect of Torah study. The lack of

discussion of this issue is notable: no alternative reasons for the prohibition are offered (e.g., such study might lead to idolatry), no circumstances under which such study might be permitted are suggested (e.g., it is a requirement of the state), and only the statement of R. Joshua is reported. The fact that the issue is considered at all suggests at least some concern on the part of the Sages about the appeal of the larger culture.

In another new area of interaction, the Tosefta offers several opinions regarding attendance at an amphitheater (or stadium or performance in a camp). Several rationales are offered for the prohibition—because the Israelite would be practicing idolatry if a sacrifice is made (2:5C), because the Israelite would be fraternizing with those who ridicule the Torah (2:5D, 2:6C), because the Israelite would thereby neglect Torah study (2:6D), and because he would be guilty of bloodshed if gladiators were fighting (2:7C). However, the Tosefta allows an Israelite to attend an amphitheater for several reasons: if it is a state requirement (2:7A), to try to save the life of the loser (2:7E), to give evidence that a man has been killed so that his wife may remarry (2:7F), and “on account of the task of preserving order in the province” (2:7H). Although Israelites are allowed to attend events of idolaters in these circumstances, they may not “take account of what is happening” there (2:7B and I). Here is a case in which the Sages’ attempt to balance possible benefit and harm to the Israelite community and their desire to maintain separation between Israelites and the larger culture has led to an almost impossible situation: an Israelite may attend the amphitheater but must not “take account” of what happens there. Yet, if he is to serve as a witness, he must surely pay attention. The point of balance in the competing aims of the Sages comes down to a precarious place within the mind of the individual Israelite: he may attend the performance for the specified reasons, but he must remain, at least psychologically, apart from it.

The requirements of the state are noted in two other *toseftot* in this tractate. In 1:7 the fairs held by the empire, a province or the leaders of a province are allowed. In 6:1 bagpipes, ships and charity collectors belonging to an idol are allowed if they are rented from the state. Similar statements do not appear in the Mishnah. These statements allowing Israelites to come into contact with idolatrous practices or materials “in the

service of the state's requirements" suggest that the Sages have moved toward more lenient rulings in situations involving authorities in which an Israelite's safety is in jeopardy. Or perhaps these are attempts to quash rebelliousness or at least to appear to.

In a final example, the Tosefta considers at some length the issue of living outside the Land of Israel, which is "weighed against all the other religious requirements of the Torah" (4:3C). An Israelite should only go to live abroad if his life depends on it (i.e., he would starve if he stayed or perhaps in time of war) (4:4). Otherwise, it is as if the covenant has been violated: God is no longer the God of the Israelites (4:5A-B). Leaving the Land is also equated with idolatry (4:5L-O and 4:6). Beyond the need for Israelites to remain in the Land in order to sustain Israel's special relationship with God, the Sages seem to suggest that the risks of losing one's identity as an Israelite are too great outside, where one might easily be swept into idolatry. In all of these examples, the Tosefta appears to view the points of connection between Israelites and idolaters as fraught with danger, but here the risk is spiritual rather than physical—in a Greek book, at Roman games, especially in the completely alien world outside the Land of Israel, the Jew's commitment to Torah itself is threatened.⁶⁷

The Tosefta considers one additional subject that is not mentioned in the Mishnah in *Avodah Zarah* or elsewhere⁶⁸: the seven *mitzvot* binding on the children of Noah (8:4-8:7). These *toseftot* seem to be appended to the end of the tractate; they are unconnected to what precedes them, and the issues they raise are not fully developed (see 8:4E, in particular). Still, their inclusion here suggests that the Sages wished to differentiate between idolaters and other non-Israelites. Although some of the specifics of the discussion are troubling to a modern sense of fairness (for example, the different treatment of Israelite and non-Israelite murderers [8:5B] and thieves [8:5D-E]), there is an opening here for greater acceptance of some types of non-Israelites.

It is difficult to summarize the attitude of these texts toward non-Jews. Both are to a great extent anthologies, representing a variety of points of view, and both focus on specifics, avoiding generalizations or sweeping statements that might apply in all situations. In

both, contact with idolaters is prohibited in a few clearly defined situations, restricted in many others, and allowed to occur freely in still others. The need to separate Israel from idolatry is constrained by practical and economic considerations and in the Tosefta by psychological ones. Only a few statements in the Mishnah and the Tosefta suggest that the immoral and dangerous character of idolaters, rather than their practice of idolatry, is behind the prohibition of contact with them. Beyond these, the behavior of the idolater is sometimes trustworthy and sometimes not, much like that of the *am ha'aretz*. The Tosefta appears to be more aware than the Mishnah of the pressures toward assimilation in the surrounding culture, but at the same time it introduces a category of non-Israelite that is bound by its own covenant with God.

According to Neusner, the Mishnah's "principal concern...centered upon sanctification." One part of sanctification means "distinguishing Israel in all its dimensions from the world in all its ways..."⁶⁹ If these Rabbinic texts are primarily concerned with the distinction between Israel and the other nations, it is somewhat surprising that a more negative attitude toward the idolater—that "other" who is most distinct from Israel or distinct from Israel in the most fundamental way—is not found in them. Israel differentiates itself from the nations through its behavior—the observance of the myriad of laws established in the covenant and the later rulings of the Sages. Beyond the prohibition of idol worship by Israelites and others, neither the Mishnah nor the Tosefta displays much evidence of a need to vilify or demonize the other. One must look elsewhere in Rabbinic literature to find "the spirit of haughty exclusiveness and contempt for the non-Israelite said to be characteristic of the Jew and Judaism."⁷⁰

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¹ Terminology is tricky. The term *Jew* appears very late and infrequently in the Bible. *Israel*, *children of Israel*, etc. are the most commonly used ways to refer to the people. Those who are not part of the people are variously referred to with *goi*, *ger*, *nokhri*, and *zar*, each with its own connotations, and with the names of the various nations. Idol worship is most commonly referred to as *worship of other gods* and on occasion as *strange worship/avodah zarah*. Rabbinic literature was frequently censored, and *Egyptian*, *Amalekite*, *Zadokite* and *kuti/Samaritan* often replaced *nozeri* (Christian), *goi*, Roman, and *akkum* (an abbreviation for

oved *kokhavim u-mazzalot*) according to *Encyclopaedia Judaica*, “Gentile,” pp. 410-412. See the discussion of the use of these terms in our texts on page 5 below. Although my title refers to *non-Jews*, I’ve used *avodah zarah* and *idolater/idolatry/idol worship* in the text because these are more neutral terms, and they, arguably, more accurately reflect the meaning of the Mishnah and the Tosefta; as Judith Abrams notes: “when rabbinic literature speaks of non-Jews it is generally referring to idol worshippers, not to followers of Christianity or Islam” (italics in the original) (*The Talmud for Beginners*, Vol. 3 [Northvale, NJ: Jason Aronson Inc., 1997] p. xxiv).

² Strack, H.L. and Stemberger, Gunter, *Introduction to the Talmud and Midrash* (Minneapolis: Fortress Press, 1992), p. 150. *Tosefta*, with a small *t*, also refers to the individual teachings themselves.

³ Neusner, Jacob, *Introduction to Rabbinic Literature* (New York: Doubleday, 1994), p. 131.

⁴ *Ibid.*

⁵ Strack and Stemberger, *Introduction*, p. 151.

⁶ *Ibid.*

⁷ *Ibid.*, p. 152.

⁸ Strack and Stemberger, *Introduction*, identify these continuities, p. 150.

⁹ Neusner, *Introduction*, p. 132.

¹⁰ *Ibid.*, p. 129.

¹¹ The discussion that follows is based on *Introduction*, pp. 153-155.

¹² *Ibid.*, pp. 155-156.

¹³ *Ibid.*, p. 156.

¹⁴ *Ibid.*, p. 157.

¹⁵ Neusner, *Introduction*, p. 131. His ideas about the dating of the *Tosefta* has undergone some development. He first assigns the date to between 200 and 450, essentially unknown (*History of Mishnaic Law*, Vol. 6 [Leiden: E.J. Brill, 1975-1984] p. xi). In 1981, he dates it to the end of the 4th century (*The Study of Ancient Judaism*, Vol. 2 [New York] p. ix). Just five years later he posits a much earlier date, between the preliminary redaction of M and its ultimate conclusion” (*The Tosefta: Its Structures and its Sources* [Atlanta: Scholars Press, 1986] 99, p. 7). In the revised introduction to the reprinted translation that appeared in 1990 (Vol. 6, p. xxiii) and in *The Tosefta: An Introduction* [Atlanta: Scholars Press, 1992] he has arrived at the dating described above.

¹⁶ *Introduction*, p. 157.

¹⁷ *Ibid.*, p. 158.

¹⁸ Hebrew and English citations of the Mishnah are from the edition translated and edited by Philip Blackman (New York: The Judaica Press, Inc., 1963). English citations of the Tosefta are from the translation by Jacob Neusner (Peabody, MA: Hendrickson Publishers, 2002). Hebrew citations are from [oops! I didn’t get the bibliographic information from the Hebrew Tosefta that I copied at your house]. I’ve retained the language of the original translations although they sometimes obscure the similarity or even identity of the two texts. In most cases, I will note this fact.

¹⁹ Blackman, *Mishnah, Seder Nezeikin*, p. 447.

²⁰ *Encyclopaedia Judaica*, “Gentile,” pp. 410-412

²¹ A common observation, mentioned for example in D. Kraemer, *The Mind of the Talmud*, (New York and Oxford: Oxford University Press, 1990) p. 26.

²² *Introduction*, pp. 125-126.

²³ *Introduction*, p. 128. See also Ginzberg, Louis, “The Palestinian Talmud,” in Michael Chernick, ed., *Essential Papers on the Talmud* (New York & London: New York University Press, 1994) p. 183.

²⁴ *Mind of the Talmud*, p. 14.

²⁵ The *tosefta* actually deviates from the *mishnah* is its attribution of the ruling, naming R. Yehudah instead of R. Yose. However, the remaining attributions in the *tosefta* cite R. Yose, suggesting that the earlier attribution might be an error?

²⁶ They occur in *mishnayot* 1:1 (2), 1:7, 1:9 (2), 2:1 (4), 2:3, 3:1, 3:2, 3:5, 4:6 5:6

²⁷ A. Steinsaltz, *The Talmud, The Steinsaltz Edition, A Reference Guide* (New York: Random House, 1989), p. 133.

²⁸ Although not nearly to the extent that the Talmuds do, D. Kraemer, *Mind of the Talmud*, p. 16.

²⁹ Two additional *mishnayot* include an alternative view identified by P. Kehati, *The Mishnah*, as later additions—2:5 and 2:6.

³⁰ *Mind of the Talmud*, p. 16.

³¹ M. Berger, class notes Fall 2003. L. Ginzberg, “The Palestinian Talmud,” states that it is usually clear which opinion is authoritative; however, he appears to be relying on the evidence of the Tosefta and the Talmuds to make this claim, p. 184.

³² M. Berger, class notes, Fall 2003, makes this point regarding the Mishnah.

³³ *Introduction*, p. 130. The same typology can be found in the introduction to the new edition of Neusner’s translation of the Tosefta, p. xiii.

³⁴ *Ibid.*

³⁵ *Ibid.*, p. 131.

³⁶ *Ibid.*, p. 130. Strack and Stemberger, *Introduction*, p. 152, identify seven types of connection between the Mishnah and the Tosefta. However, these finer distinctions (for example, “T offers authors’ names for sentences which are anonymous in M”) do not reveal much about the history or structure of the texts.

³⁷ These numbers are based on the identification in Neusner’s translation of the Tosefta, where he indicates statements identical with those found in the Mishnah, references to statements in the Mishnah, and statements identified with cf., which seems to denote passages dealing with the same subject in a similar manner. I do not agree with some of Neusner’s determinations; for example, *tosefta* 1:1 begins with a statement about the prohibition of doing business with idolaters one day before their festivals outside of the land of Israel. The second statement asks, “Under what circumstances?” and answers that the rule applies to festivals that recur. Neusner indicates that the question refers to *mishnah* 1:1. However, it makes as much sense as a reference to the initial statement in the *tosefta*. On the other hand, Neusner does not identify some of the correspondences that are present. For example, the statement in *tosefta* 5:7E appears to be identical with the statement in *mishnah* 4:4D, except for the terms for idolater, and the statements in *mishnah* 3:3 and *tosefta* 3:19, which are the same except for their attribution, but they are not so indicated by Neusner. Because my Hebrew is limited, I did not attempt to compare every related *mishnah* and *tosefta*, but relied in my analysis on Neusner’s determinations. Where I found a discrepancy, I have indicated it.

³⁸ Neusner, *Introduction*, p. 131.

³⁹ Statements that Neusner identifies as identical in Tosefta and Mishnah are in italics. Additional statements that I have identified as identical are underlined.

⁴⁰ An additional seven *toseftot* mix the categories in a way that makes classification difficult. Percentages are based on the 107 *toseftot* that are readily classifiable.

⁴¹ The expansion of this *massekhet* is less than that observed in other parts of the two texts and in assessments of the whole: it is generally reported that the *Tosefta* is four times as long as the Mishnah (for example, Strack and Stemberger, *Introduction*, p. 154).

⁴² *Introduction*, p. 157, see above.

⁴³ J. Neusner draws these conclusions in *The Mishnah: Religious Perspectives* (Boston and Leiden: Brill Academic Publishers, Inc., 2002), p. 43.

⁴⁴ See, for example, Joshua 15:63, which states that the Jebusites dwelled among the Israelites, and Judges 1:16, 21, 27-36, which state that the Kenites, Jebusites, Canaanites, and Amorites are settled in Israel and Judah.

⁴⁵ Strack and Stemberger, *Introduction*, p. 138, refer to the world of the Mishnah as utopian, “an idealized order of the perfect harmony of heaven and earth,” based on an underlying philosophy that is implicit in the text. Its redactor(s) holds onto the past, maintaining its reality and significance, viewing present circumstances as a temporary aberration that will, if Israel repents, ultimately lead to a restoration of the perfect world that existed in Eden. Neusner, *The Mishnah: Religious Perspectives* (Boston and Leiden: Brill Academic Publishers, Inc., 2002), pp. 205-210 and M. Berger, “Introduction to the Mishnah,” class notes (Fall 2003), also discuss this topic.

⁴⁶ J. Neusner, *The Mishnah*, p. 45, makes this point.

⁴⁷ *The Mishnah*, p. 45.

⁴⁸ P. Kehati, *The Mishnah, Seder Nezekin*, (Jerusalem: Eliner Library, Department for Torah Education and Culture in the Diaspora, 1994) p. 1, suggests similar principles.

⁴⁹ There is ambiguity in this statement, and in Kehati’s commentary as well (*Seder Nezekin*, pp. 18-19). The prohibition may involve bringing another idolater into the world, or it may involve providing a potential idolatrous sacrifice—child sacrifice is one of the most reviled practices of idolaters in the Bible and in any case, providing a sacrifice contributes to the practice of idol worship, as Kehati’s explanation of

the earlier statements in this *mishnah* suggests; see below. Blackman does not offer any comment on this passage.

⁵⁰ This interpretation is based on Kehati, *Seder Nezeikin*, p. 8.

⁵¹ M. Berger, class notes (Fall 2003). This point is also noted in J. Abrams, "In general, the sages legislate the minimum required behavior...and then encourage a higher standard.... (*The Talmud for Beginners*, p. 23).

⁵² P. Kehati, *Seder Nezeikin*, p. 5, suggests that this is in addition to the festival day itself.

⁵³ *Ibid.*, pp. 11-12 and 17.

⁵⁴ Kehati notes that there is some difference among commentators in their understanding of the ruling on medical treatment and that the Gemara is more lenient in this regard, *ibid.*, p. 20.

⁵⁵ Kehati, *Seder Nezeikin*, pp. 9 and 18. Kehati mentions *Tosefot Yom Tov* as a source of this interpretation.

⁵⁶ R. M. ben S. Meiri, *Bet HaBehirah*, cited in P. Kehati, *The Mishnah*, p. 2.

⁵⁷ *Jewish Encyclopedia*, "The Gentile," p. 616.

⁵⁸ *Ibid.*

⁵⁹ *Ibid. The Encyclopaedia Judaica*, "Gentile," p. 411, expresses a similar view, noting "the extreme antipathy of the tormented Jew of Hadrian's time...."

⁶⁰ P. Kehati, *Seder Nezeikin*, p. 34, provides this interpretation.

⁶¹ A. Steinsaltz, *Talmud Reference Guide*, p. 241.

⁶² *Jewish Encyclopedia*, "Gentile," p. 616.

⁶³ *The Mishnah*, p. 30.

⁶⁴ This may be at least partly a result of the general Rabbinic allowance for actions after the fact or *b'di'avad/it having been done*.

⁶⁵ This statement occurs just once in the Mishnah in *Avodah Zarah* 2:1. I was unable to determine if it occurs in the Tosefta outside of *Avodah Zarah*.

⁶⁶ J. Abrams, *Introduction to the Talmud*, p. 54, suggests that while "the Mishnah systematically limits interactions with idolaters, particularly when one is vulnerable,... [t]he Gemara allows needs to motivate contact with the idolatrous world and provides ways of doing so that do not violate the integrity of Judaism or the Jewish community."

⁶⁷ This may be an indication of the Tosefta's movement toward the more "inward focus" that is evident in the Gemara, as J. Abrams describes it in *The Talmud for Beginners*, Ch. 4.

⁶⁸ The Noahide Laws are mentioned in *Avot* 5, but this tractate is considered to be considerably later than the rest of the Mishnah.

⁶⁹ *Rabbinic Literature*, pp. 97-98.

⁷⁰ *Jewish Encyclopedia*, "Gentile," p. 616.